I. WHEN IS A GUARDIAN NEEDED?

A. *What is a Guardian?*

A person with a severe mental disability may be unable to exercise some or all of his or her own rights or to protect his or her own interests. A *guardian* is a person appointed by a court to take the place of the person in exercising the rights he or she is unable to exercise, to make (or help make) decisions the person is unable to make independently, and to be an advocate for the person's interests.

A guardianship is created by a court order, and the guardian only has the powers that state law and the court order provide. Any person in Wisconsin over the age of 18 is legally an adult, and is presumed to be able to manage his or her own financial affairs, choose where to live, consent to medical treatment, vote, make contracts, marry, and exercise his or her own legal rights as an adult. This presumption does not change because a person has a disability.

The presumption that an adult is competent to make his or her own decisions often comes as a surprise to family members, who may find themselves with no legal right to be involved in, or even know about, care that a relative is receiving. For example, family members may be refused information about the person's needs and treatment because he or she is unable, or refuses, to give informed consent to release of the information.

B. *What are the Different Kinds of Guardians?*

There are two basic kinds of guardians, a guardian of the estate and a guardian of the person. A court appoints a *guardian of the estate* for a person who is incompetent to handle his or her own finances. A court appoints a *guardian of the person* for a person who is incompetent to provide or arrange for personal needs, such as the need for shelter, food, medical care, or social services. A court may appoint the same person as guardian of both the estate and the person, or the responsibilities may be divided.

For both personal and financial guardianships, a court may establish either a *full* or a *limited guardianship*. Under Wisconsin law, the court can (and should) make specific findings as to the rights and powers a person is not competent to exercise, and should limit guardianship to those rights and powers. For example, if a person is competent to handle his or her salary or a small personal allowance but not a large bank account, the court may limit the financial guardianship to allow the person to continue to manage his paycheck or allowance. Similarly, the court can limit a guardianship of the person to recognize the person's ability to vote, marry, drive, contract, choose a place to live, etc. To protect the person's rights, self-image, and opportunity to learn, the powers of a guardian should be carefully limited to areas where the person clearly needs a substitute decision-maker. (See Section III.)

A *standby guardian* is a person appointed by the court to become guardian upon the death, incapacity or resignation of guardian. The standby guardian must inform the court when he or she begins to exercise the powers of a guardian.

A *temporary guardian* is appointed only for a limited period of time, and his or her powers must be limited in the order to authority over specific property or specific acts.

C. *Advantages and Disadvantages of Guardianship*

If a person is genuinely unable to protect himself or herself, or to understand his or her rights, a guardianship can be an important tool for protecting the person from abuse, neglect or exploitation, and for ensuring that there is someone able to understand and assert the person's rights. For example:

- A person may need money for food and shelter, medical care, or rehabilitation services but may be unable to identify or apply for assistance. A guardian can monitor the person's need for assistance, make the application, and appeal if benefits are denied.

- A person who does not understand the value of money may give away his or her monthly check to someone who is exploiting the person's lack of understanding. A guardian can limit access to funds and control how they are spent.

- A person in an institution may be physically restrained much of the day, without being able to challenge what is happening, because this is easier for staff. A guardian can protect the person's right to freedom from unnecessary restraint, to appropriate treatment, and to the least restrictive residential placement.

Thus, a guardianship can protect as well as restrict rights. However, some rights (like the right to vote, to marry, or to consent to sterilization) are considered so personal that a guardian cannot exercise them and they are lost completely unless the court finds that the person is competent to exercise them on his or her own.

On the other hand, a guardianship that is not justified by the person's real needs, or that is more restrictive than necessary, has substantial costs:

- The process of establishing that a person is incompetent is often a painful one, not only for the person but also for friends and family members who are called upon to squarely face and discuss the question of what the person can and cannot do.

- A person found incompetent loses many basic, day-to-day rights, and may also feel a loss of dignity and respect because he or she must seek the consent and assistance of another person for many activities that other people take for granted. Other people may see the person as less capable than he or she actually is.

- Loss of rights may reduce the persons' opportunity to learn to make choices, and thus to develop or keep decision-making skills.

For these reasons, a guardianship should be sought only if it is clearly for the benefit of the person, and not because it is easier or more convenient for others to make decisions for him or her. If a guardianship is sought, it should be tailored to deprive the person of control over a part of his or her own life only when there is a functional reason.

D. *Finding of "Incompetence"*

The ability of a person to manage his or her own affairs is called "*competence*." Before a judge can appoint a guardian for a person, the judge must find that the person is "*incompetent*." Legal incompetence is a finding by a court that:

- The person has a mental disability, such as mental retardation, brain injury, chronic mental illness or organic brain

damage caused by advanced age. The disability must be long-term and must substantially impair the person from providing for their own needs. Physical disability by itself is not enough to establish incompetence.

- Because of the mental disability, the person is substantially incapable of managing his or her property (for financial guardianship) or of caring for himself or herself (for personal guardianship), or both.

A person is not incompetent simply because he or she knowingly and voluntarily chooses to do something most of us would consider foolish. All of us have a right to make mistakes. The guardianship law can only be used to protect those who are unable to provide for their own needs, not those who are able but unwilling to do so.

A person also cannot be considered incompetent because of failure to understand something that was not explained in the way that he or she was most likely to understand, or because it may take extra time and effort on the part of other people to communicate with the person. These problems should be dealt with in other ways, such as use of interpreters and development and use of alternative communication methods.

It is most useful to think of competence in terms of the person's ability to understand the nature and consequences of a particular action or decision, if information about the action or decision is presented in a form the person is most likely to understand, and then to make decisions that take that information into account. For example, with regard to consent to medical treatment, the test might be whether, after the treatment is explained to the person in the clearest possible way, the person can understand the benefits and risks of the treatment and of any alternative types of treatment, and can make a rational decision based on available facts.

Incompetence is not an all-or-nothing concept. Some people can understand most of the decisions they face in everyday life, but may need help with financial management or complex medical decisions.

E. *How Should Competence be Evaluated?*

The most useful way to determine whether a person needs a guardian, and for what purposes, is to break down the person's need for support and protection into functional areas, such as medical decisions, personal needs, safety, relationships, etc. For each of these functional areas, the evaluator can then ask the questions:

- What decisions does the person face in this issue area? What decisions is s/he likely to face in the future?

- For decisions relevant to his/her life, is the person substantially able to understand all significant information on the nature, risks and benefits of the various options, if explained to him/her in a form s/he is most likely to understand? If not, is this inability due to a substantial, long-term mental disability?

- Has the person had the opportunity to develop decision-making capacity through training and practice? Has the person had needed evaluation, training, and therapy to develop receptive and expressive language skills or provide alternative communication methods? If not, would this be likely to develop or restore decision-making ability?

- Where the person lacks the evaluative capacity to make a knowing choice, does this incapacity have a substantial impact on his/her ability to manage finances or care for him/herself?

In this approach, knowledge of the person's day to day skills and of the practical issues he or she is likely to face are at least as important as diagnostic skills. Ideally, information from formal medical or psychological testing should be combined with information gathered from people who know and work with the person in his or her typical environments.

F. *Other Factors that Affect Need for Guardianship*

Need for a guardian will depend not only on a person's abilities but also on his or her personal situation. Some people who could clearly qualify for guardianship are functioning well without one. Others who have greater skills may be in need of protection because they are highly vulnerable. Factors include:

- **Availability of informal social supports.** If the person has family, friends or a volunteer citizen advocate willing to play an active role in helping him or her make decisions, he or she may be able to function well without a guardian, so long as he or she is able to know when help is needed and how to seek it. A person who is willing to have his funds deposited into a two-signature checking account usually will not need a financial guardian. A person who brings major decisions to a support circle of family, friends and paid support workers may not need any guardian, or may only need one for complex medical decisions.

- **Availability of formal support services and treatment.** A strong network of support services that both protects the person from unacceptable risks and actively works to help the person develop and practice skills in decision-making, health and nutrition, self-protection, personal care, care of the home, etc, can be as protective as a guardianship and more effective in teaching long-term independence.

- **Dependence on services/institutional placement.** Heavy dependence on medical, social or mental health services may itself create a need for guardianship. These agencies can be very powerful, and a guardian may be the only means to provide outside monitoring of how that power is used. This becomes particularly true in services, such as institutions, that are isolated from the larger society and/or have the potential to control every aspect of a person's life.

Much depends on the attitude of the person and those around him or her. For voluntary support systems to work, the person must be willing to accept help. Those relied on for help must be supportive of the person's rights. It is essential to be alert for conflicts of interest: family members may be motivated by a desire to hold on to the person's funds; service providers may act out of desire to minimize their own workloads or expenses. Unless there are checks and balances over the power of others, a guardian may be a necessary protection.

II. ALTERNATIVES TO GUARDIANSHIP

A. *Introduction*

Because guardianship labels the person "incompetent" and takes away legal rights, it is something that should only be used when it is clearly needed. One alternative to guardianship, providing a good support system and helping people to make decisions for themselves, is mentioned above in Section I-F.

The other alternatives to guardianship discussed below generally provide fewer outside checks on the substitute decision-maker. They are often effective as ways to make sure that basic needs for food, clothing, shelter and medical care are met, without establishing a guardianship. If set up and used correctly, they may more closely carry out the person's wishes than a court-ordered guardianship. However, they may also provide less protection for the person, such as a hearing before they are established and continuing oversight by a court.

B. *Financial Management Advance Planning Alternatives*

IMPORTANT NOTE: With the exception of 4., Representative Payment, all of the options listed below must

be set up while the individual is still competent.

1. Joint Bank Accounts

    a. Joint Tenancy Accounts

This option involves setting up a bank account that permits one individual "or" another to access a bank account. It is similar to accounts held by married couples where "Mrs. Jones OR Mr. Jones" can write checks, withdraw from savings accounts, etc. It can be especially useful when individuals have physical disabilities which prevent them from shopping, cashing checks or paying bills. It is important to note that funds held in joint tenancy can be misused, so this option should be exercised with caution and only when the person with whom the agreement is made is fully trusted. This may not be the best choice if the individual is mismanaging his or her funds, since the individual will still have total access to the account. Also, at the time of the death of one of the parties, the funds become the sole property of the other individual named on the account.

    b. Dual Signature Checking Accounts

A dual signature checking account allows the person to make out his or her own checks, but requires the person to get another person's signature before the checks can be used. This can be a very useful way of letting the person retain responsibility and learn financial management while preventing major errors in judgement. These accounts require that both persons sign a check before it will be paid and thus the accounts read "Mrs. Elder AND Donna Daughter," signifying that before a check will be cashed or a withdrawal honored, BOTH parties must sign. Like the joint tenancy bank account, the dual-signature account may be set up at a bank. It is fairly simple to do so.

CAUTION: Funds in these bank accounts appear to belong to both individuals so there is a danger that the more competent signer could exercise undue influence. Also, at the time of death, the money in the account becomes frozen.

2. Power of Attorney

If the person is competent to understand his or her action, he or she can give another person, called an "attorney-in-fact," the power to manage all or part of his or her finances. A power of attorney should be in writing and can be limited only to certain property and powers. For example, an attorney-in-fact could be given power to manage and rent out the person's real estate, but not to sell it. An ordinary power of attorney can be withdrawn at any time, and ends automatically if the person dies or becomes incompetent.

Under Wisconsin law, it is possible, and indeed generally advisable, to establish a "*durable* power of attorney" which continues even if the person who establishes it later becomes incompetent, or first becomes effective when the individual becomes mentally incapacitated. This gives a person a way of planning ahead by specifying who the person wants to act in his or her place if he or she becomes incompetent. Unlike a guardianship, however, there is no supervising court to oversee the use of funds and to replace the financial manager if circumstances change and therefore this is an area that is ripe for abuse. This is one reason that a private attorney should be used in setting up the powers of attorney to ensure that legal requirements are met and that the client is adequately protected. This could include putting in restrictions on making gifts of the principal's property and requiring regular accounts to third persons.

3. Conservatorship

If the person is competent to understand his or her action, he or she can request the court to appoint a conservator who has exactly the same powers and responsibilities as a guardian of the estate. Conservatorship is different from guardianship in that there is no finding of incompetence and the person can ask the court to end the conservatorship at any time. The conservatorship may then be continued only if the court holds a hearing, finds that the person is

incompetent to handle his or her finances, and appoints a guardian of the estate to handle financial and property matters. A conservatorship's advantage over a durable power of attorney is the built-in required court accounts and court oversight. It does, however, involve attorney's fees and a court appearance to set it up.

4. Representative Payment

If it is determined that a person is incapable of managing his or her Social Security, Supplemental Security Income (SSI), Railroad Retirement of Veterans Administration benefits, the appropriate government agency has the authority to appoint a "representative payee" to receive the checks and use them for the benefit of the person. This is often done on the basis of an application from a relative or caretaker and a statement by a physician or psychologist about the person's financial competence. No court action is needed, and a hearing is held only if the person requests it. The payee must hold the funds in a separate account, make sure that benefits are used first for the support and maintenance of the person, and must meet the agency's reporting requirements. Persons with mental or physical disabilities or chemical abuse problems which prevent them from managing their money properly may benefit from this device which results in the government issuing the check to “John Jones for the Benefit of Edward Elder.”

Unlike all of the other alternatives suggested in this section, representative payment is available even after the onset of incapacity. It may be adequate for clients of moderate means whose primary, if not sole, source of income are one of these types of government benefits.

The application for representative payment is usually made by the person responsible for care of the beneficiary. The government must contact the beneficiary's physician and initiate contact with the doctor, asking whether the doctor believes the individual is capable of managing his or her money. The person can appeal both the need for representative payment and the choice of payee.

Representative payment has the advantage that the person's control over other aspects of his or her life are not directly affected. On the other hand, control over a person's only source of income can give a representative payee powers almost as great as a guardian's, without many of the procedural protections. If a person is in need of extensive advocacy and protection in seeing to personal needs, representative payment should not be used as a substitute for guardianship. This system thus presents some risks and should be used cautiously; there are minimal accounting requirements and few safeguards, although the government agency may require an accounting from the representative payee and can investigate allegations of misuse of funds.

5. Trusts

Under a trust, resources are transferred by a "grantor" to a trust, with a "trustee" appointed, to use the funds for the benefit of the "beneficiary." If the transfer is made during the grantor's lifetime, with the grantor permitted to change any terms of the trust, it is called a "living trust." If the transfer is made without the grantor being able to change any terms of the trust, it is called an "irrevocable living trust." The "trustee" may only use the resources in the way and for the purposes set out by the person creating the trust. For example, a parent of a disabled person could transfer resources to a trust, directing the trustee to use those resources for the benefit of his son or daughter (the "beneficiary" of the trust). The trust provides a way of making resources available for the benefit of the person while leaving management and decisions in the hands of the trustee.

Or, an elder person starting to experience some dementia may transfer some of her funds to a trust, naming herself as the current trustee, but naming another individual as the "successor trustee" to take over when her dementia progresses to the point where she can't manage her own finances anymore. The elder herself would likely also be the beneficiary in this case.

In some cases, resources cannot be given directly to another person, even through a trust, because the individual would

lose Medical Assistance or Supplemental Security Income benefits. Funds in a trust are generally not counted as resources for these programs as long as the person does not have a direct or automatic right to use of the funds for his or her basic support. Generally, these trusts are written to leave use of the funds up to the trustee, who is directed in the trust document to supplement rather than replace public benefits (e.g., by paying for medical, social or other services not available under public programs.) For more information on trusts, see *One Step Ahead: Resource Planning for People with Disabilities Who Rely on Supplemental Security Income and Medical Assistance*, available from the Wisconsin Council on Developmental Disabilities.

In the type of trust described above, the beneficiary must rely on the trustee to put the resources of the trust to use. The trustee will need to be someone who will actively work to identify and meet the special needs of the person, and who will involve the person in decision-making to the greatest extent possible. If the trustee does not know the person well, a relative or advocate may be able to take the role of identifying needs to the trustee.
Trusts are extremely complicated and the advice of an attorney should be sought to create the trust. The attorney should be familiar both with the needs of people with disabilities and with the requirements of any public benefits the person may be eligible for. Do-it-yourself mail order kits should not be used as they do not take into account Wisconsin laws regarding property transfer, marital property or taxes.

C. *Health Care Advance Planning Alternatives*

1. Living Wills

Also known as the "Declaration to Physicians," a Living Will is a short state form that an individual can fill out indicating that he or she does or does not want life-sustaining treatment and/or feeding tubes used if the signer is ever in: (1) a "persistent vegetative state" or (2) a "terminal condition with death imminent." It does not appoint an agent or anyone else to make the decisions for the person. Rather, it is a statement from the signer to physicians telling the physicians that the signer does or does not want these treatments if ever diagnosed by two physicians to have one of these conditions.

While the Living Will is an excellent and simple tool for these situations, as explained below, it is less comprehensive than the Power of Attorney for Health Care. Individuals may complete both documents, taking care that they do not conflict with each other. To receive a copy of the Living Will, send a self-addressed envelope to: Wisconsin Department of Health and Family Services, Division of Health, P.O. Box 309, Madison, WI 53701-0309.

REMINDER: Individuals must be competent to complete a Living Will. A guardian may not complete a Living Will for his or her ward.

2. Powers of Attorney for Health Care

Competent individuals may complete a state form indicating who they would want to make medical decisions for them if they ever become mentally incapacitated. The signer, called the "principal," appoints a "health care agent," or simply "agent," to make these decisions after they have been personally examined by two physicians (or one physician and one psychologist) certifying that the individual is "incapacitated" meaning that he or she is no longer capable of making medical decisions for themselves. Specific authority must be given to the agent to make decisions regarding admitting the principal to a nursing home or community-based residential facility, withholding or withdrawing feeding tubes, or continuing to make decisions if the principal later becomes pregnant. An alternate agent may also be selected. The agents selected may be friends or family members. A health care agent may not be a health care provider for the person, or the spouse or employee of a health care provider, unless he or she is also a relative of the person. There are specific requirements regarding witnessing.

In making decisions under a Power of Attorney for Health Care, an agent must make decisions consistent with what the principal has previously told him or her, as specifically written in the document or what the agent believes the principal

would want. In other words, the agent is to make decisions the *principal* would want ("substituted judgment") not what the agent thinks would be in the principal's "best interests." It is helpful for the person creating the power of attorney to think through what he or she would want in different situations, and to give the agent as much direction as possible, either in the power of attorney document or through separate documents.

The Power of Attorney for Health Care is the most comprehensive health care advance planning alternative. Unlike the Living Will, which is limited to situations where the individual is in a persistent vegetative state or in a terminal condition, the Power of Attorney for Health Care can be followed any time the principal is incapacitated (for example, dementia, Alzheimer's, after a stroke, after a brain injury, etc.). Additionally, the Power of Attorney for Health Care applies to more kinds of treatment than the Living Will. The Living Will only gives direction about life-sustaining treatment and feeding tubes; the Power of Attorney for Health Care can give the agent authority regarding virtually any treatment except for mental health admissions, experimental mental health treatments and other more controversial and extreme procedures. For example, the Power of Attorney for Health Care, but not the Living Will, would address situations requiring a decision about agreeing to home care, starting physical therapy, setting a broken leg, taking certain medications, etc.

To receive a copy of the Power of Attorney for Health Care, send a self-addressed envelope to: Wisconsin DHFS, Division of Health, P.O. Box 309, Madison, WI 53701-0309.

REMINDER: Individuals must be competent to complete a Power of Attorney for Health Care. A guardian may not complete a Power of Attorney for Health Care for his or her ward.

3. Do-Not-Resuscitate Orders

A "Do-Not-Resuscitate (DNR) Order" is a written order directing emergency medical technicians, first responders and emergency health care facilities personnel not to attempt cardiopulmonary resuscitation on a person for whom the order is issued if that person suffers cardiac or respiratory arrest. It is important to note that because of the statutory definitions, these documents are **only** directed at emergency medical technicians, first responders and emergency health care facilities personnel.

Other types of DNR Orders (e.g., those that apply in in-patient hospital settings) are not covered under this law. The execution of a DNR Order is different from execution requirements for Living Wills and Powers of Attorney for Health Care, specifically in that while Living Wills and Powers of Attorney for Health Care are executed by competent individuals and are subject to witnessing requirements, DNR Orders may only be issued by physicians and are not subject to witnessing requirements.

A Living Will or Power of Attorney for Health Care is executed by an adult, at least age 18, of "sound mind." A DNR Order, however, may only be issued by a physician and then only when the person is a "qualified patient." Under the statutes, a "qualified patient" is an individual who:

- Is age 18 or over;
- Has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful in restoring cardiac or respiratory function or the person would experience repeated cardiac or pulmonary failure within a short period before death occurs; and
- Has a medical condition such that, were the person to suffer cardiac or pulmonary failure, resuscitation of that person would cause significant physical pain or harm that would outweigh the possibility that resuscitation would successfully restore cardiac or respiratory function for an indefinite period of time.

Once the order is issued, the attending physician (or a person directed by the doctor) must provide the patient with written information about the resuscitation procedures that the patient has chosen to forego **and** the methods for the patient to revoke the document.

After providing this information, the attending physician or the person directed by the attending physician is required to affix a **Do-Not-Resuscitate Bracelet** to the patient's wrist and document in the patient's medical record the specific medical condition that qualifies the patient for the order. The Department of Health and Family Services is required to develop rules about the bracelets.

The DNR Order would come into play when a person for whom the order is issued suffers cardiac or respiratory arrest. Then emergency medical technicians (EMTs), first responders and emergency health care facility personnel are required to follow the order. The only exceptions are when the medical personnel know the individual revoked the document, the bracelet appears tampered with or removed or if they know the individual is pregnant.

To receive more information about Do Not Resuscitate orders, write to: Wisconsin DHFS, Division of Health, P.O. Box 309, Madison, WI 53701-0309.

NOTE: A competent individual may request a DNR Order from his or her physician, or a guardian or agent may request a DNR order on behalf of the ward or principal.

III. TAILORING GUARDIANSHIPS TO INDIVIDUAL NEEDS

A. *Seeking the Least Possible Restriction on Personal Liberty*

Generally under Wisconsin law, protective supports, including guardianship, should be the least restrictive necessary to achieve their protective purpose. This means:

- Identifying **alternatives to guardianship** and determining if they would be less restrictive. Alternatives may or may not be less restrictive; lack of court oversight may give greater rather than less control to an alternative decision-maker.

- Using **limited guardianship** to ensure that the person does not lose rights which he or she is capable of exercising.

The result of an unnecessarily restrictive guardianship is not only loss of rights for the person, but unnecessary dependence, waste of the guardian's time, and unnecessary conflict between the guardian and the person over issues where the guardian does not really need to be involved.

B. *Use of Limited Guardianship*

Wisconsin law requires a court to make specific findings as to which legal rights an individual is competent to exercise. In a finding of limited incompetence, a guardianship of the person must be limited in accordance with the court order. The statute lists several rights which the individual can be found competent to exercise. The listed rights are: the right to vote, to marry, to get a driver's license or other state license, to hold or convey property and to contract. This list is not exclusive: the law specifically provides that other rights can also be retained. Findings of incompetence must be based on clear and convincing evidence. If there is no evidence relating to an area of decision-making, the presumption should be that the person is competent in that area.

Rights that may be retained and should be at least considered in each evaluation include:

- **Right to vote**. A guardian has no power to vote for the person. The standard for competence to vote is that the person must be **capable of understanding the purpose of the electoral process**.

- **Right to marry.** A person must be legally and actually competent to marry. A guardian has no power to consent to marry on behalf of the person. If a guardian of the person is appointed, the right to marry must be reserved to the person or it is completely lost. The test should be whether the person understands the nature and consequences of marriage.

- **Contract and hold and convey property.** If no guardianship of the estate is being established, it is important that persons able to do so retain these rights, as a guardian of the person has no authority to make contracts (including leases) or to buy or sell things on the person's behalf.

- **Hold licenses.** See Section VII-C-2.

- **Associate with people of one's own choice.** A major source of conflict between guardians and wards is the person's right to choose friends and companions. Unless the person's choice of associates is likely to create a substantial risk to his or her health or safety, there is no reason for the guardian to have this power.

- **Consent to sterilization, abortion and birth control.** A person under guardianship cannot be sterilized unless the guardianship is limited to allow him or her to consent. The same may be true for abortion. If the person is able to retain control in these areas, it is useful to reserve these rights, rather than to deal with the issue later.

- **Consent to sexual contact.** This is an issue people may often want to avoid addressing. It is, however, a fundamental human right and an issue that comes up frequently. Many people under full guardianships are in fact capable of understanding and consenting to sexual contact. It would make everyone's life easier if this were determined at the outset, so that the guardian knows that his/her powers are limited.

- **Travel, and/or decide where to live.** Except in an emergency, a guardian does not have authority to force the person to live somewhere over his/her objection. Spelling out the individual's rights in this area can avoid conflicts and can also make clear the person's ability to change residence from state to state.

- **Consent to medical or other treatment.** Generally (but not always), if a person needs guardianship of the person, he or she will need some help with complex medical decision-making. However, he or she may be capable of giving consent to other kinds of treatment, such as counseling or therapy. Of particular importance may be the ability to consent to **acute inpatient psychiatric evaluation and treatment**, as guardians may lack authority to consent in this area.

- **Make or alter a will.** A guardian cannot make a will on the person's behalf. A person under guardianship will be able to execute or alter a will only if that right is reserved to him or her.

- **Have access to or release treatment and other confidential records.**

- **Limited guardianship of property.** This can be used to allow the person to retain control over wages and earnings and could be tailored to allow control over other specific property, such as Social Security payments or small back accounts.

C. *Involvement of the Individual in Decision-making After Guardianship is Created*

The principle of least restrictiveness, and good practice, call for involving the individual as much as possible in decision-

making even in areas where the guardian has legal authority. Such involvement is the best way for the person to learn or regain the skills needed to make his or her own decisions. In many cases "incompetence" results from lack of experience with decision-making or the need to develop more effective communication skills. Even where incompetence is likely to be long term, learning and/or cognitive stimulation can occur. Involvement is also the best way to show respect for the person and learn his or her preferences. Finally, the person is most likely to understand and cooperate with decisions when he or she has been involved in making them.

Guardians of the estate can help the person develop financial management skills by allowing the person to handle part or all of monthly income, by use of dual-signature checking accounts, etc.